

Office of the Secretary of Defense

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that the refusal may be appealed administratively and will advise the individual of the procedures for such appeals.

§ 318.8 Appeal of initial adverse Agency determination for access, correction or amendment.

(a) An individual who disagrees with the denial or partial denial of his or her request for access, correction, or amendment of Agency records pertaining to himself/herself, may file a request for administrative review of such refusal within 30 days after the date of notification of the denial or partial denial.

(b) Such requests shall be made in writing and mailed to the Office of the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166-7517.

(c) The requester shall provide a brief written statement setting forth the reasons for his or her disagreement with the initial determination and provide such additional supporting material as the individual feels necessary to justify the appeal.

(d) Within 30 working days of receipt of the request for review, the Agency shall advise the individual of the final disposition of the request.

(e) In those cases where the initial determination is reversed, the individual will be so informed and the Agency will take appropriate action.

(f) In those cases where the initial determination is sustained, the individual shall be advised:

(1) In the case of a request for access to a record, of the individual's right to seek judicial review of the Agency refusal for access.

(2) In the case of a request to correct or amend the record:

(i) Of the individual's right to file a concise statement of his or her reasons for disagreeing with the Agency's decision in the record,

(ii) Of the procedures for filing a statement of the disagreement, and

(iii) Of the individual's right to seek judicial review of the Agency's refusal to correct or amend a record.

[61 FR 63713, Dec. 2, 1996, as amended at 63 FR 60213, Nov. 9, 1998]

§ 318.9 Disclosure of record to persons other than the individual to whom it pertains.

(a) *General.* No record contained in a system of records maintained by DTRA shall be disclosed by any means to any person or agency within or outside the Department of Defense without the request or consent of the subject of the record, except as described in 32 CFR part 310.41, appendix C to part 310, and/or a Defense Threat Reduction Agency system of records notice.

(b) *Accounting of disclosures.* Except for disclosures made to members of the DoD in connection with their official duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DTRA system of records.

(1) Accounting entries will normally be kept on a DTRA form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(3) Accounting records will be maintained for at least 5 years after the last disclosure, or for the life of the record, whichever is longer.

(4) Subjects of DTRA records will be given access to associated accounting records upon request, except for those disclosures made to law enforcement activities when the law enforcement activity has requested that the disclosure not be made, and/or as exempted under section 318.11 of this part.

[62 FR 67292, Dec. 24, 1997, as amended at 63 FR 60212, Nov. 9, 1998]

§ 318.10 Fees.

Individuals may request copies for retention of any documents to which they are granted access in DTRA records pertaining to them. Requesters will not be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such

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charges will be computed in accordance with DoD 5400.11-R.

[62 FR 67292, Dec. 24, 1997, as amended at 63 FR 60212, Nov. 9, 1998]

§ 318.11 Exemption rules.

(a) *Exemption for classified material.* All systems of records maintained by the Defense Threat Reduction Agency shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contain any information properly classified under E.O. 12598 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

(b) *System identifier and name:* HDSWA 007, Security Operations.

(1) *Exemption:* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), (I), and (f).

(2) *Authority:* 5 U.S.C. 552a(k)(5).

(3) *Reasons:* (i) From subsection (c)(3) because it will enable DTRA to safeguard certain investigations and relay law enforcement information without compromise of the information, and protect the identities of confidential sources who might not otherwise come forward and who have furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of security investigations. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in

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the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1), (e)(4)(G), (H), (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information; under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(d) *System identifier and name:* HDSWA 011, Inspector General Investigation Files.

(1) *Exemption:* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(2) *Authority:* 5 U.S.C. 552a (k)(2).

(3) *Reasons:* (i) From subsection (c)(3) because it will enable DTRA to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise